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In re Application of :
PLUNDRICH, Winfried et al :
Application No.: 09/890,235 :
PCT No.: PCT/DE00/00170 :
Int. Filing Date: 20 January 2000 :
Priority Date: 28 January 1999 :
Attorney's Docket No.: 449122007600 :
For: COMPOSITE OF TWO PARTS :
FORMED USING A GLUE :

**DECISION ON
PETITION TO WITHDRAW
HOLDING OF ABANDONMENT**

The decision is in response to applicants' "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed on 09 July 2002. No fee is required.

BACKGROUND

On 30 July 2001, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, a purported English translation of the international application.

On 05 September 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (PCT/DO/EO/905) and a NOTICE OF DEFECTIVE TRANSLATION (PCT/DO/EO/913) indicating that the translation was defective because the number of claims in the international application and the translation were not the same and that the Office required a translation of the original claims as filed.

On 07 January 2002, applicants filed a response which included an English translation of the International Preliminary Examination Report ("IPER") together with a two-month extension request with an accompanying \$400.00 check and authorization to charge any additional fees as required to Deposit Account No. 03-1952.

On 09 April 2002, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that the translation of the international application was defective because the number of claims in the international application and the number of claims in the translation was not the same. This Notification required a response within one-month from the date of mailing thereof or within the time remaining for response set forth in the Form PCT/DO/EO/905. No further extensions of time were available.

On 08 May 2002, applicants submitted a document titled "COMMUNICATION" along with copies of the documents previously filed 07 January 2002.

On 10 June 2002, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the above-captioned application was abandoned for failure to reply to the Form PCT/DO/EO/905 mailed 05 September 2001 within the time period set therein.

On 09 July 2002, applicants filed the instant petition requesting that the holding of abandonment be withdrawn.

DISCUSSION

Applicants claim that the response filed 07 January 2002 contained a translation of the IPER which explains the canceling of claims in the PCT application. Therefore, the English translation originally submitted with the national stage papers on 30 July 2001 was not defective.

However, 35 U.S.C. 371 (c)(2) requires the applicant to file a copy of the international application, and a translation into the English language of the international application, if it was filed in another language. In addition, 37 CFR 1.495(c)(1) requires a translation of the international application, as filed, into the English language, if it was originally filed in another language. Moreover, 37 CFR 1.495(h) states that if "any required translation of the international application as filed and/or the oath or declaration are not timely filed, an international application will become abandoned as to the United States upon expiration of the time period set pursuant to paragraph (c) of this section."

Accordingly, the translation submitted on 30 July 2001 was defective because it was not a translation of the international application as originally filed. The translation did not include the same number of claims as the original. A translation of the international application as originally filed has not yet been submitted.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 requesting that the holding of abandonment be withdrawn is DISMISSED.

The application remains ABANDONED.

Applicants may wish to consider filing a petition under 37 CFR 1.137(a) or (b) requesting that the application be revived. An acceptable English language translation of the international application as filed and a petition fee is required to be filed with the

petition to revive.

Any such petition to revive or request for reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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